



FRENCH AMF RESPONSE TO EFRAG'S PUBLIC CONSULTATION ON THE DRAFT EUROPEAN SUSTAINABILITY REPORTING STANDARDS

POSITION PAPER – 27th July 2022

The AMF welcomes the European Union sustainable finance agenda, among which the Corporate Sustainability Reporting Directive (CSRD) stands out as a key pillar. There is an urgent need to make available standardised and auditable data according to a coherent methodological framework. In this context, the AMF praises EFRAG's efforts to develop a comprehensive set of standards covering a broad range of ESG topics under the double materiality perspective in such a constrained timeframe.

International interoperability

The ESG momentum is not limited to Europe, and rightly so: the transition towards sustainability is a global challenge and most major jurisdictions are in the process of implementing some disclosure frameworks. The AMF is keen to preserve a level playing field between EU preparers and third-country competitors and to enhance the comparability of information for investors. Therefore, the AMF wishes to draw EFRAG's attention to the need to ensure convergence between its standards and those of the International Sustainability Standards Board.

Despite the fact that the ISSB (International Sustainability Standards Board) and EFRAG embraced a different approach to materiality, taking a co-constructive route from the onset would facilitate the tasks of issuers, who probably will face multiple reporting requirements that could then ideally be achieved through the same data points, constructed based on same concepts, terminologies and methodologies. This cooperation between ISSB and EFRAG will also be much relevant for the elaboration of industry-specific standards.

Prioritisation of disclosure requirements

From its financial regulator perspective, the AMF is paying particular attention to the quality of information disclosed by companies.

The question arises as to whether the 400 pages of the draft ESRS (European sustainability reporting standards) could lead to a disclosure overload that could eventually make the implementation of those standards a mere "compliance exercise", thus lowering the quality of information disclosed to stakeholders.

In addition, the AMF is mindful of the costs and burden that those requirements may create for issuers.

The AMF therefore believes that a progressive implementation of some requirements or some degree of optionality could be introduced in the reporting requirements.

This is particularly needed in areas where there is a lack of sufficiently detailed and robust methods to compute necessary data, or where data availability is nascent at this stage. Such instances may justify converting some disclosure requirements into optional data points, for example for a temporary period of 3 years, while still providing useful guidance to companies to illustrate what they could report until the reporting become mandatory. Thereby companies would benefit from a trial phase to gradually become acquainted with the relevant subject and the adequate level of information to address it. For instance, for the less mature but not less important four other environmental matters (i.e. critical climate standard aside), such a phased-in approach would make particular

sense especially for reporting on value chain and information on the (potential) financial effects from the sustainability impacts, risks and opportunities.

Similarly, this could apply to some of the detailed and descriptive disclosures requirements under the Social standards related to workers in the value chain (S2), affected communities (S3), consumers and end-users (S4).

The first post-implementation review, foreseen three years after the date of application of the standards, will help determine which of the optional information should become mandatory (either in the topical or the industry-specific standards), depending namely on the maturity of the market as well as evolving practices and needs ; conversely, information that would not be considered critical could remain optional.

Materiality

Materiality is the cornerstone of corporate reporting, as it ensures that investors and stakeholders are provided with meaningful information for their decision-making while limiting the risks of information overload. Therefore, it is paramount to develop a precise framework enabling a rigorous and consistent application of this concept. In this regard, specific guidance on the implementation of materiality assessments to sustainability information would be welcome.

Besides, the AMF believes that the introduction of a “rebuttable materiality presumption” mechanism raises significant issues. Firstly, the materiality presumption, which operates under the premise that all sustainability matters and all disclosures requirements are material for all undertakings, contradicts the spirit of CSRD, and the basic requirement to disclose “relevant” information following an appropriate assessment, performed by the issuer itself, of the materiality of both the sustainability-related impacts, risks and opportunities, and the related-information. Secondly, the rebuttable presumption raises questions due to the granularity of information needed in the rebuttable presumption statement, which risks hampering the readability of reporting and exacerbating the disclosure overload issue. Finally, EFRAG seems to be misguided by its intended objective of managing “the amount of mandatory disclosure requirements” through this mechanism, as it could be seen as an incentive for companies to mitigate their reporting burden, whereas its effect would likely be the opposite. Consequently, the AMF recommends removing the rebuttable presumption mechanism from the standards.

Quality of information

Beyond materiality, the quality of information provided by companies could be further improved in the following ways. The AMF argues that some notions and definitions merit further clarification in order for the disclosure requirements to be understandable, including in respect of the ISSB baseline. For instance, the notion of “value creation” is not backed by a proper definition in the ESRS, which raises questions with regard to ISSB’s “enterprise value creation” (defined as the total value of an entity from an investors’ viewpoint). This is also true for other terms like “dependencies” and its relation with risks and impacts that should be explained.

In addition, some methodological principles could be specified (through assumptions, uncertainties, limits...) to substantiate performance metrics and complex assessment exercises, such as the resilience analysis. There is a risk that entities apply heterogeneous calculation methods when computing the generic indicators of EFRAG’s standards. To take one example, comparing the information pertaining to ESRS S1’s disclosure requirement on fair remuneration, which includes reporting on “the percentage of own workers whose wage is below the fair wage” (without further methodological prescriptions), might represent a significant challenge for firms.

Consistency with other EU Legislation

The AMF is very concerned that financial market participants do not always have access to all the data they need from the disclosures of investees, to meet their regulatory reporting obligations under the Sustainable Finance Disclosure Regulation (SFDR).

To this respect, the AMF welcomes that the draft ESRS fit well with the disclosure requirements for financial market participants under SFDR even though some ESRS disclosure requirements could still be amended or required, as documented in our responses to the consultation survey, to ensure full consistency with SFDR.

Some requirements of the ESRS are already mandated by other EU requirements such as the corporate governance statement (Art. 20 of Directive 2013/34/UE), or the remuneration report (Art. 9 ter of Directive 2007/36/UE), for entities listed on EU regulated markets. In order to avoid duplicative requirements, information overload and undue reporting burden for preparers, the AMF recommends firstly authorising cross-references from existing regulatory disclosures presented outside the management report, when they overlap with ESRS requirements. The AMF suggests also not to require additional disclosures beyond what is already requested in these other legislations on these specific areas - unless such disclosures are critical for companies to understand sustainability matters.

Moreover, the AMF advises harmonising notions used in the ESRS and other EU legislation to ensure consistency within the EU framework. For example, on the definition of “governance bodies”, it could be useful to include the notion of “director” as provided by the Shareholder Rights Directive 2007/36/UE (and amended by Directive EU 2017/828).

Finally, it is important to make clear that ESRS standards do not mandate by themselves any specific action nor behaviour from the undertaking for example in terms of organization or governance, but aims at ensuring transparency on such organization and/or governance as they stand. Indeed, mandating specific behaviour should stay in the remit of other EU legislation or national laws.

More generally, regarding the consistency of the EU legislation framework, the AMF would see merit in adapting the reporting obligations applicable to financial market participants to properly take into consideration situations where data from issuers might not be available due to their non-materiality feature.

To support the implementation of the standards, the AMF encourages EFRAG to consider the creation of a “transition resource group”, following the IASB’s example during the implementation of major new accounting standards such as IFRS 15, IFRS 9 or IFRS 17. Such initiative would provide a public forum for stakeholders to analyse and discuss issues arising from implementation, which would then inform the TEG’s work and the EFRAG Sustainability Board’s decisions.

More detailed comments on the draft standards are set out in the [separate Appendix](#) to this position paper.